IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.3036/2004.

Dr.Ramkrishna s/o Ganesh Bhide (Since deceased Through: legal heirs)

(1A). Dr. Avinash Ramkrishna Bhide, (since deceased through his legal heirs)

1A-a] Smt. Mangal Wd/o Avinash Bhide, age Adult, Occu. Household.

1A-b] Kumari Anjali D/o Avinash Bhide age Adult, Occu. Education.

1A-c] Kumari Jyoti d/o Avinash Bhide, age Adult, Occu. Education.

1A-d] Kumari Swati d/o Avinash Bhide, age adult, Occupation education, All are the Resident of 2108, Sadashiv Peth, Pune-411 030.

1B) Shri. Subhash s/o Ramkrishna Bhide, age adult, Occupation service,

1C) Smt.Kusum w/o Ramkrishna Bhide, age Adult, Occupation household,

1D) Kumari Suman d/o Ramkrishna Bhide, age adult, Occupation household, All are the resident of 2108, Sadashiv Peth, Pune-411 030.

2. Dr. Dilip s/o Ganesh Doedhar, age about 41 years, Occu-Doctor, R/o 1536, Sukrawar Peth, Pune-2.

..Petitioners.

Vs.

Chunilal s/o Mathuradas Mehta (since deceased, represented by his legal heirs),

Smt. Anandibai wd/o Chunilal Mehta. (since deceased, represented by her legal heirs)

1] Shri.Anant s/o Chunilal Mehta, Age about 63, Occupation Service, R/o 1536, Shukrawar

Peth, Pune-2.

2] Shri. Ramakant s/o Chunilal Mehta, Age about 55 years, Occu.Service, R/o 1536, Shukrawar Peth,Pune-2.

3] Shri.Madhav s/o Chunilal Mehta, age about 46 years, Occu.Service,

4] Sou. Kanta w/o Chandrakant Sheth, age about 66 years, Occ.Household.

5] Shri.Arvind s/o Chunilal Mehta, age about 60 years, Occu/business, Nos. 3, 4, and 5 are residing at 1536, Shukrawar Peth,Pune-2.

6] Shri.Nandkumar s/o Chunilal Mehta, age about 57 years, Occu.service, R/o at Post Thane, Thakur Niwas, Co-op. Housing Society, Thane Dist.West.

7] Shri. Madan s/o Chunilal Mehta, age about 50 years, Occu.Service, R/o Saikrupa Housing Society, Shridharnagar, Dhankwadi, Pune-43.

8] Shri. Rasik s/o Chunilal Mehta, age about 46 years, Occu-service, R/at Dombivali, MIDC Niwasa Vibhag, Budamnagar,Plot No.2, DOMBIVALI.

9] Sou. Samita W/o Prakash Mehta, Age about 53 years, Occupation Household, R/o Jagaon, Tal. Dapoli, Dist. Ratnagiri.

10] Sou.Jayashri w/o Narayan Kachare, Age about 70 years, Occu.Household, R/o 67-B, Shukrawar Peth,Pune-2. ..RESPONDENTS.

..Respondents.

Mr.S.G. Page with Mr.S.R.Page, Advocate for Petitioner.

Mr.G.S. Godbole, Advocate for Respondent Nos. 1 to 3, 5 to 10.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:17TH NOVEMBER, 2006.

ORAL JUDGMENT.

1. Heard.

2. Rule. By consent Rule is made returnable forthwith.

3. The petitioners challenge judgment and order dated 7th February, 2004 passed by the lower Appellate Court in Civil Appeal No. 441 of 1995. By the impugned order while setting aside the decree of the trial Court passed in Civil Suit No. 2102 of 1983 dated 15th April,1995, the lower Appellate Court has remanded the matter to the Trial Court for fresh hearing thereof, including giving opportunity to the parties to lead additional evidence, if they so desire.

4. While challenging the impugned order, learned Advocate for the petitioners submitted that the Trial Court has remanded the matter solely on the ground of absence of issues being framed in relation to the matter pertaining to hardship and closure of premises as well as recovery of the amount claimed in the plaint. The lower Appellate Court could

not have allowed to enlarge the scope of the suit and/or introduction of a new ground for eviction of a tenant under the Rent Act. It is sought to be contended on behalf of the petitioners that the pleadings never disclosed any ground of eviction of the petitioners on account of arrears of rent and undisputedly at no point of time any notice was issued demanding arrears of rent. Being so, the lower Appellate Court could not have directed the Trial Court to consider the issue regarding the arrears of rent in relation to the eviction proceedings initiated by the respondent against the petitioners. He has further submitted the lower Appellate Court could not have allowed the parties to lead further evidence without arriving at a finding about justification for any such liberty being given to the parties. It was the contention on behalf of the petitioners that the parties having understood the case of each other which was required to be met, had led the evidence in the matter and, therefore, there could not be further opportunity to the parties to fill up the lacuna in the evidence by obtaining such an order.

5. On the other hand, the learned Advocate for the respondent has submitted that the reference to the arrears of rent in the impugned order is not in relation to the ground for eviction but in relation to the rent which was sought to be recovered in the suit. As regards the point of hardship and closure of the premises, it is sought to be contended that since no issue in that regard was framed, no fault can be found with the impugned order allowing the parties to lead evidence, once such issues are framed.

6. As regards the point of arrears of rent, undisputedly, there was no suit filed by the respondent against the petitioners for eviction of the petitioners on the ground of the default in payment of rent. Being so, the petitioners are justified in contending that the lower Appellate Court could not have required the Trial Court to frame any issue regarding the arrears of rent. The point which was sought to be raised in the plaint was regarding the certain amount being due and

payable to the respondent by the petitioners. Being so, issue could be regarding liability to pay the amount claimed in the plaint and not in relation to arrears of rent. Undoubtedly, the respondent had claimed an amount of Rs.109.20 as being due and payable by the petitioners and the said amount was sought to be recovered in terms of prayer clause 12(b) in the plaint. Being so, there ought to have been issue as to whether the petitioners owe sum of Rs.109.20 to the respondent as claimed. However, there cannot be any issue as to whether the petitioners are in arrears of rent payable to the respondent. It is immaterial that the amount claimed as due and payable by the petitioners is towards the amount of rent in relation to the suit premises.

7. As regards the point of hardship, undoubtedly, the suit was filed for eviction of the petitioners on the ground of need of premises for personal occupation of the land lord. Considering the provisions of law comprised under the Rent Act, whenever such a suit is filed, while assessing the evidence

led by the parties on the point of bona-fide need of the premises alleged by the landlord, the Court has to consider the issue regarding the hardship. It is consequential issue in relation to the claim of bona-fide need of the premises. Being so, the lower Appellate Court, certainly, was justified in observing that the Trial Court ought to have considered the said issue of hardship after having framed the said issue. Undoubtedly, the Trial Court had not framed any such issue. However, it is not in dispute that the parties, knowing well the case of each other, had led evidence on the point of hardship. Being so, the issue of hardship being consequential to the issue of the bona-fide need, it is required to be framed and shall be dealt with on the basis of whatever evidence that has been led by the parties and there cannot be any occasion for the parties to lead further evidence on the said issue and thereby fill up the lacuna in evidence.

8. Similarly, as regards the point regarding closure of suit premises, there is no such issue framed and/or considered by the

trial Court. At the same time, however, the pleadings in the plaint disclose that the eviction of the petitioner was sought on the said ground and the respondent has already led necessary evidence on the said issue. Whether the evidence which has been led is sufficient or not is for the Trial Court to decide after framing said issue but that itself cannot be justification to permit the respondent to lead further evidence on the said issue.

9. The contention which is sought to be raised on the behalf of the respondents that moment those issues are allowed to be framed, the parties would be entitled to lead evidence, cannot be accepted as a general proposition of law. It would depend on the facts and circumstances of each case. In a case where the parties proceed to record the evidence knowing fully well the rival contentions which are sought to be raised on a particular issue involved in the matter, though not specifically framed, cannot be thereafter allowed to lead further evidence merely on account of failure of the trial

court to frame such an issue as that would give an occasion for the parties to fill up lacuna in the evidence. In the case in hand, once it is clear that the respondent knowing well that the suit was filed also on the ground of closure of the premises, had led the evidence, merely because the trial Court had failed to frame the issue in that regard and now the appellate Court has directed to frame the issue in that regard, there cannot be justification to allow the respondent to lead further evidence on the said issue in the matter.

10. For the reasons stated above, therefore, the impugned judgment, so far as it directs framing of issue on the point of the arrears of rent, as also permit the parties to lead further evidence, cannot be sustained. However, no interference is required in relation to the issues on the point of hardship as well as the closure of premises and recovery of the amount claimed in the plaint. Needless to say that this would not come in the way of the parties to bring to the notice of the trial Court subsequent event, if

any, and in that regard to lead any evidence regarding any such subsequent event.

11. For the reasons stated above, therefore, the impugned order is modified to the extent that remand shall be to the extent specified as above and Rule is made absolute in the above terms with no order as to costs.

[R.M.S.KHANDEPARKAR,J]